

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Transition Process for 700 MHz Public Safety	)	PS Docket No. 12-94
Broadband Waiver Recipients	)	

**COMMENTS OF THE UTILITIES TELECOM COUNCIL**

Pursuant to Section 1.405 of the Commission’s Rules, the Utilities Telecom Council (“UTC”) hereby files its comments in response to the Commission’s Public Notice in the above-referenced matter.<sup>1</sup> UTC believes that the Commission should permit the Waiver Recipients to continue deployment, rather than require them to halt deployment. Nothing in the Spectrum Act<sup>2</sup> prevents the FCC from permitting the Waiver Recipients to continue to deploy. Moreover, the public interest would be served by allowing the Waiver Recipients to continue to deploy. Halting deployment would delay the development of these systems, some of which are nearly fully deployed already. Finally, UTC urges the FCC to grant the pending waiver requests, including those by Nevada and Michigan which propose sharing the network with utilities and other critical infrastructure industries.

The Waiver Recipients must comply with interim technical interoperability requirements, which should minimize, if not preclude, the potential for additional costs being incurred by the Waiver Recipients due to interoperability issues with the Public Safety Broadband Network

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<sup>1</sup> *Public Safety and Homeland Security Bureau Seeks Comment on Transition Process for 700 MHz Public Safety Broadband Waiver Recipients*, Public Notice, DA 12-555 (rel. Apr. 6, 2012).

<sup>2</sup> Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012)(the Spectrum Act).

(PSBN). Allowing the Waiver Recipients to continue deployment should promote access to funding, some of which must be expended under the Broadband Technology Opportunities Program (BTOP).

The impact to FirstNet<sup>3</sup> is speculative if these deployments continue, and it is not at all clear that the impact would be negative. In fact, the Spectrum Act clearly contemplated the deployment of such systems, independent from FirstNet, subject to meeting interoperability requirements and approval by the FCC.

Finally, the Commission has broad authority to decide to transition the authorizations to end coincident with the end of the lease term. The Waiver Recipients may decide at the end of the lease term to proceed under FirstNet, or if the Commission renews the lease, they may choose to continue to deploy on their own. Alternatively, the Waiver Recipients could proceed under STA at the expiration of the lease, until such time as the Commission determines.

## **Introduction and Background**

UTC is the international trade association for the telecommunications and information technology interests of electric, gas and water utilities and other critical infrastructure industries (CII). UTC's members include all types of utilities from large investor-owned utilities that serve millions of customers across multi-state service territories to relatively small rural cooperative utilities and municipal utilities that may only serve a few thousand customers in remote, insular and sparsely populated areas. These member companies all use communications to support their core mission of delivering essential services to the public safely, securely and efficiently.

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<sup>3</sup> First Responder Network Authority (hereinafter "FirstNet").

UTC has participated in the FCC's proceedings to implement the 700 MHz PSBN. UTC's interest in these proceedings is to promote opportunities for utilities to share the 700 MHz PSBN with public safety entities. UTC agrees with the FCC's conclusion in its National Broadband Plan that utilities and public safety have similar communications needs and that there are a variety of public interest benefits that can be gained through sharing the 700 MHz PSBN with utilities and public safety.<sup>4</sup> As such, UTC has filed comments in support of granting waivers to applicants that propose to share their networks with utilities and other critical infrastructure industries,<sup>5</sup> and it has filed comments in support of rules for the PSBN that would permit such sharing in general.<sup>6</sup> Therefore, it is pleased to file its comments in this proceeding in support of permitting the continued deployment of systems by Waiver Recipients and in support of granting the pending waiver requests, including those that would share the network with utilities and other critical infrastructure industries.

**I. The Commission should permit the Waiver Recipients to continue deployment.**

UTC believes that the Commission should permit the Waiver Recipients to continue deployment. As the Commission noted in its Public Notice, some Waiver Recipients, like Charlotte and Texas, are nearing completion of their deployments.<sup>7</sup> It would be in the public

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<sup>4</sup> See National Broadband Plan, Recommendation 12.4 at <http://www.broadband.gov/plan/12-energy-and-the-environment/> (explaining that “[t]he wide-area network requirements of utilities are very similar to those of public safety agencies. Both require near-universal coverage and a resilient and redundant network, especially during emergencies. In a natural disaster or terrorist attack, clearing downed power lines, fixing natural gas leaks and getting power back to hospitals, transportation hubs, water treatment plants and homes are fundamental to protecting lives and property. Once deployed, a smarter grid and broadband-connected utility crews will greatly enhance the effectiveness of these activities.”)

<sup>5</sup> See Comments of UTC in PS Docket No. 06-229, filed Oct. 18, 2010.

<sup>6</sup> See Comments of UTC in PS Docket No. 06-229, filed Apr. 11, 2011. See also Reply Comments of UTC in PS Docket No. 06-229, filed May 10, 2011.

<sup>7</sup> Public Notice at 3.

interest to permit these deployments to continue, which would accelerate the goal of providing nationwide interoperable broadband communications for public safety. Similarly, those Waiver Recipients that are in early stage deployment should also be permitted to continue deployment if they so choose. These Waiver Recipients may decide that they can deploy relatively quickly and cost effectively compared to proceeding under FirstNet; or they may decide that they should wait to deploy and proceed under FirstNet. Either way, they should be permitted to choose whether to continue to deploy or not; they shouldn't be halted by the FCC.

Halting deployment would strand investment indefinitely, unnecessarily preventing Waiver Recipients, like Charlotte and Texas, from imminently going into service. The Commission should certainly permit those Waiver Recipients to continue to deploy; otherwise significant sunk investment would be suspended with little to no justification in terms of avoided additional costs. Simply put, there is virtually nothing left to lose for those Waiver Recipients, except if the Commission halts deployment. While there are arguably greater concerns about additional costs to other Waiver Recipients that are still early stage in the deployment, these concerns are adequately addressed and outweighed by the public interest benefits of permitting those deployments to continue.

UTC understands the concerns regarding interoperability and stranded investment that have been raised about permitting the Waiver Recipients to proceed. However, as a condition of the Commission's grant of their waivers, the Waiver Recipients must deploy systems that are consistent with the Commission's 700 MHz interim interoperability rules. Hence, there is a high likelihood that these systems will be deployed consistent with the interoperability requirements that will be developed by the Technical Board for First Responder Interoperability (Interoperability Board). Moreover, the interoperability requirements that are developed by the

Interoperability Board must be finalized and approved by the Commission by May 22, 2012; so the Waiver Recipients will know by then whether their systems are in compliance with those interoperability requirements and can take action to address any gaps that might exist. Thus, it does not make sense to halt the deployment of these systems due to interoperability and stranded investment concerns, because the minute risk of interoperability issues and stranded investment is outweighed by the significant public interest benefits that will accrue if deployment continues.

**II. Nothing in the Spectrum Act prevents the Commission from permitting the Waiver Recipients to continue deployment or to grant pending waivers.**

In Section 6201(c), Congress specifically directed the FCC “to take all actions necessary to facilitate the transition of the existing public safety broadband spectrum to” FirstNet.<sup>8</sup> This expansive language gives the FCC broad authority to transition as it sees fit, and there is no limiting language that constrains that authority. Thus, allowing existing Waiver Recipients to continue to deploy public safety broadband networks would be consistent with Section 6201(c). In addition, there is nothing in the Spectrum Act to prevent the Commission from granting the waivers that are pending, either.

**III. The impact on FirstNet from continuing deployment is speculative, and the Commission has broad authority to choose the appropriate process for transitioning to FirstNet.**

The impact to FirstNet as a result of continuing these deployments is speculative, and it is not at all clear that the impact would be negative. It is entirely possible that many of these systems may decide to proceed under FirstNet. It does not necessarily mean that they will opt-out from FirstNet. Nor is there any technical reason why these different systems can’t be integrated as part of the PSBN once the FirstNet is stood up and the nationwide network is established. To the contrary, these systems may lay the groundwork for the nationwide system

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<sup>8</sup> Section 6201(c) of the Spectrum Act.

to come. It is also likely that the deployment of these systems may accelerate the deployment of the PSBN across the rest of the country. Thus, it should not be assumed that the deployment of these systems will have a negative impact on FirstNet or the PSBN.

The Spectrum Act clearly contemplated the deployment of such systems, independent from FirstNet, subject to meeting interoperability requirements and approval by the FCC. Hence, the Spectrum Act includes provisions that allow the states to opt-out from FirstNet. Therefore, even if Waiver Recipients did ultimately decide to opt-out, the result would be entirely consistent with the Spectrum Act, provided that the system complied with the baseline interoperability requirements developed by the Interoperability Board.

Finally, given its broad authority under Section 6201(c) to “take all actions necessary to facilitate the transition of the existing public safety broadband spectrum to” FirstNet, the Commission may appropriately decide to transition the authorizations to end coincident with the end of the lease term. As described above, the Waiver Recipients may decide at the end of the lease term to proceed under FirstNet, or if the Commission renews the lease, they may choose to continue to deploy on their own. Alternatively, the Waiver Recipients could proceed under STA at the expiration of the lease, until such time as the Commission determines.

Respectfully submitted,

**Utilities Telecom Council**

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